

1 BRIAN D. BOYLE (S.B. #126576)
bboyle@omm.com
2 O'MELVENY & MYERS LLP
1625 Eye Street, NW
3 Washington, DC 20006
Telephone: (202) 383-5300
4 Facsimile: (202) 383-5414

5 CATALINA J. VERGARA (S.B. #223775)
cvergara@omm.com
6 O'MELVENY & MYERS LLP
400 S. Hope Street
7 Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
8 Facsimile: (213) 430-6407

9 Attorneys for Defendants
10 FRANKLIN RESOURCES, INC.

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 MARLON H. CRYER, individually and
16 on behalf of a class of all others
17 similarly situated, and on behalf of the
Franklin Templeton 401(k) Retirement
Plan,

18 Plaintiffs,

19 v.

20 FRANKLIN RESOURCES, INC., the
21 Franklin Templeton 401(k) Retirement
Plan Investment Committee, and DOES
22 1-25,

23 Defendants.
24
25
26
27
28

Case No. 4:16-cv-04265-CW

**STIPULATED ORDER RE:
DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in
3 this case as a supplement to the Federal Rules of Civil Procedure, this Court’s
4 Guidelines for the Discovery of Electronically Stored Information, and any other
5 applicable orders and rules.

6 **2. COOPERATION**

7 The parties are aware of the importance the Court places on cooperation and
8 commit to cooperate in good faith throughout the matter consistent with this Court’s
9 Guidelines for the Discovery of ESI.

10 **3. LIAISON**

11 The parties have identified liaisons to each other who are and will be
12 knowledgeable about and responsible for discussing their respective ESI. Each e-
13 discovery liaison will be, or have access to those who are, knowledgeable about the
14 technical aspects of e-discovery, including the location, nature, accessibility, format,
15 collection, search methodologies, and production of ESI in this matter. The parties will
16 rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without
17 court intervention.

18 **4. PRESERVATION**

19 The parties have discussed their preservation obligations and needs and agree that
20 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce
21 the costs and burdens of preservation and to ensure proper ESI is preserved, the parties
22 agree that:

23 a) Only such ESI created or received after July 28, 2010 will be preserved.

24 b) The parties have exchanged a list of the types of ESI they believe should
25 be preserved and the custodians, or general job titles or descriptions of custodians, for
26 whom they believe ESI should be preserved. The parties shall add or remove custodians
27 as reasonably necessary.

28 c) Among the sources of data the parties agree are not reasonably accessible,

1 the parties agree not to preserve the following: Defendants' digital voicemail.

2 **5. SEARCH**

3 The parties agree that in connection with discovery requests propounded pursuant
4 to Fed. R. Civ. P. 34, they will meet and confer about methods to search ESI in order to
5 identify ESI that is subject to production in discovery and filter out ESI that is not
6 subject to discovery.

7 **6. PRODUCTION FORMATS**

8 All documents produced in discovery in this litigation, other than the exceptions
9 noted in this stipulation, will be produced as black and white, electronic TIFF images.
10 Producing documents as electronic TIFF images means they shall be provided as single-
11 page Tagged Image File Format (".tiff format") files and shall reflect, without visual
12 degradation, the full and complete information as represented in the original document.
13 The producing party shall produce extracted text files reflecting the full text that has
14 been electronically extracted from the original, native electronic files, unless redactions
15 are required in which case the text shall be based on OCR text of the redacted files. All
16 Microsoft Excel and PowerPoint documents, except those requiring redaction, will be
17 produced in native format only with a Bates-numbered TIFF image slip-sheet stating
18 "Document [Bates numbers] is an Excel/PowerPoint file that has been produced in
19 native format." Microsoft Excel and PowerPoints requiring redaction shall be produced
20 in TIFF. If particular documents warrant a different format, the parties will cooperate to
21 arrange for the mutually acceptable production of such documents.

22 **7. PHASING**

23 The parties agree to meet and confer regarding the phased production of ESI in
24 response to discovery requests propounded pursuant to Fed. R. Civ. P. 34.

25 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

26 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-
27 product-protected document, whether inadvertent or otherwise, is not a waiver of
28 privilege or protection from discovery in this case or in any other federal or state

proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

b) Any “claw back” issues shall be treated in accordance with Fed. R. Civ. P. 26 (b)(5), Fed. R. Evid. 502 and any Protective Order, as modified by the parties and entered by the Court.

c) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

9. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 5, 2017

BRIAN D. BOYLE
CATALINA J. VERGARA
O’MELVENY & MYERS LLP

By: /s/ Catalina J. Vergara
Catalina J. Vergara

Attorneys for Defendant
FRANKLIN RESOURCES, INC.

1 Dated: May 5, 2017

JOSEPH A. CREITZ
CREITZ & SEREBIN LLP

2 MARK P. KINDALL
3 ROBERT A. IZARD
4 IZARD KINDALL & RAABE LLP

5 GREGORY Y. PORTER
6 MARK G. BOYKO
7 BAILEY & GLASSER LLP

8 By: /s/ Mark G. Boyko
Mark G. Boyko

9 Attorneys for Plaintiff
10 MARLON H. CRYER

11
12
13
14
15
16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18
19 Dated: _____

The Honorable Claudia Wilken
United States District Judge

ATTESTATION

I, Catalina J. Vergara, am the ECF User whose ID and password are being used to file this Stipulated Order Re: Discovery of Electronically Stored Information. In compliance with Local Rule 5-1(i)(3), I hereby attest that counsel for Plaintiff, Mark G. Boyko, concurs in this filing.

Dated: May 5, 2017

/s/ Catalina J. Vergara

Catalina J. Vergara